



COMMONWEALTH OF KENTUCKY
ETHICS COMMITTEE OF THE KENTUCKY JUDICIARY
700 Capitol Ave., Ste. 200
FRANKFORT, KENTUCKY 40601-3489

ANTHONY M. WILHOIT
COURT OF APPEALS

ROGER L. CRITTENDEN
DISTRICT COURT

JOSEPH H. ECKERT
CIRCUIT COURT

B. M. WESTBERRY, CHAIRMAN
ATTORNEY

UHEL O. BARRICKMAN
ATTORNEY

Judicial Ethics Committee
JE-82

February 6, 1992

Question: Whether a judge must disqualify from a case when one of the parties to the suit is occasionally represented in other litigation by the judge's spouse. The judge's spouse is not representing the party in this case.

Answer: Qualified No. The judge need not disqualify unless the fees paid by the party to the spouse of the judge represent a substantial part of the family income.

The Judicial Ethics Committee was asked to decide whether a judge would have to disqualify from a case when one of the parties to the suit was occasionally represented in other litigation by the judge's spouse. The judge's spouse was not representing the party in the present case. An attorney is an independent contractor and our opinion would perhaps be different were the spouse the employee of the party. The Committee found one Judicial Ethics Opinion from New Mexico which was nearly on point. NM Opinion 87-7 (Issue 2) (October 14, 1987) reprinted in D. Solomon, The Digest of Judicial Ethics Advisory Opinions 359 (1991). In that opinion, a judge was not required to disqualify from a case where his daughter represented one of the parties in other litigation. She was not representing the party in the case before her father.

If the fees generated by the party to the spouse contribute substantially to the family income, however, the judge should disqualify.

Jean Collins
for B. M. Westberry
Chairman
Judicial Ethics Committee

BMW:mhj